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November 15, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: In re matter of Metrocall, Inc. v. BellSouth Telecommunications, BellSouth Corporation, GTE Telephone Operations, Pacific Bell Telephone Company, US West Communications, Inc., File Nos. E-98-14, E-98-16, E-98-17, E-98-18; Petitions for Reconsideration of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185

Dear Ms. Salas:

On November 12, 1999, Aaron Panner and I met with Dorothy Attwood of the FCC, on behalf of BellSouth Corporation, GTE Telephone Operations, and SBC Communications to discuss issues in the above-captioned proceedings. The enclosed documents, copies of which were left with Ms. Attwood, reflect the points covered in our discussion.

One original and one copy of this letter (along with the attachments) are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7902.

Sincerely,

Michael Kellogg

Michael K. Kellogg

Enclosures

cc: Counsel for Metrocall and TSR Paging

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October 14, 1999

Christopher J. Wright, Esquire
General Counsel
Federal Communications Commission
445 Twelfth Street, S.W.
Room 8C-723
Washington, D.C. 20554

RE: *LEC-Paging Interconnection*

Dear Chris:

Thank you for taking the time to meet with us yesterday. As we discussed, the paging interconnection matters now before the Commission raise the question whether a paging carrier may order facilities out of state tariffs and then simply refuse to pay for them. We believe that the answer to that question is "no," for both jurisdictional and substantive reasons.

Jurisdiction: Paging carriers base their claim to free facilities on section 251(b)(5) of the Act and on the Commission's regulations implementing that provision. But a carrier may avail itself of the rights provided in section 251(b) and (c) *only* by invoking the negotiation and arbitration process of section 252. *See* 47 U.S.C. § 251(c)(1) (requiring incumbent carriers and requesting carriers to negotiate in good faith the terms to fulfill the duties described in sections 251(b) and (c)). Indeed, the Commission itself recognized that its rules are designed, not to supplant this process of negotiation and arbitration, but to "help expedite the parties' negotiations and drive voluntary LEC-CMRS interconnection agreements." *Local Interconnection Order*, 11 FCC Rcd 15499, 16005, ¶ 1024 (1996).

Despite the requirement that the substantive provisions of the statute and the Commission's implementing regulations be fulfilled through the procedures set forth in section 252, some have argued that the Commission's rules are self-effectuating. In particular, they point to section 51.703(b), which provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). In discussing this rule in the *Local Interconnection Order*, the Commission indicated that LECs are required, as of the date of the order, to cease charging CMRS providers for traffic. *Local Interconnection Order*, 11 FCC Rcd at 16016, ¶ 1042. As discussed more fully below, however, this language — both in the rule and the order — applies to charges for traffic, not charges for facilities. More fundamentally, the Commission never explained how it could preempt valid state interconnection tariffs, absent negotiations and arbitration, pursuant to section 251(b)(5). Indeed, elsewhere in the order, the FCC explicitly disclaimed any intent to preempt state interconnection tariffs. *See id.* at 16006, ¶ 1026 (noting that preemption of state interconnection rates "would require a case-by-case evaluation").

For these reasons, even if one were to accept the paging providers' reading of section 251(b)(5) of the Act and section 51.703(b) of the Commission's rules, those provisions would provide no basis for a paging provider to continue to take service under state tariffs while refusing to pay for those services. To the contrary, if a paging provider wishes to avail itself of rights granted under sections 251 and 252, and the Commission's implementing regulations, it must enter into the negotiation prescribed by the Act. Many of the LEC-paging disputes now before the Commission should thus be resolved on jurisdictional grounds alone: a paging carrier that has not sought negotiations pursuant to sections 251 and 252 has no basis for complaint before the Commission or anywhere else based on section 51.703(b) of the Commission's rules.

Merits: The paging industry's position on the merits of this dispute is wrong as well. LECs have no quarrel with the proposition that interconnecting carriers should not charge one another for local traffic originated on their respective networks. But the position taken by the Chief of the Common Carrier Bureau in the *Metzger Letter*[1] — that the rule prohibiting charges for traffic likewise prohibits charges for the facilities used to deliver that traffic — is facially incorrect. Section 51.703(b) has nothing to do with charges for facilities. Where the Commission wishes to address charges for facilities, it knows how to do so explicitly. *See, e.g.*, 47 C.F.R. § 51.709(b) (governing rates to be set by state commissions for "facilities dedicated to the transmission of traffic"). Notably, the Commission has never endorsed the *Metzger Letter*, and it is not clear that the Commission even considers it binding: Applications for Review of the letter have been pending for nearly two years.

[1] Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau to Keith Davis, et al., DA 97-2726 (FCC Dec. 30, 1997).

The Commission should not merely repudiate the *Metzger Letter*, however; the Commission should take advantage of pending Petitions for Reconsideration of the *Local Interconnection Order* to make clear that reciprocal compensation does not apply to paging providers in the first place. Any other result is inconsistent with the statute — and with the text of the Commission's own rules — for three basic reasons.

First, because paging carriers are incapable of originating traffic that terminates on LECs' networks, they are incapable of entering into *reciprocal* arrangements with LECs. Section 251(b)(5) requires payment of compensation only where the arrangement is reciprocal; section 252(d)(2)(A) confirms that arrangements must provide for "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d)(2)(A). These provisions only make sense as applied to other providers of local telephone service. Paging carriers simply do not have the sort of "network facilities" that can originate calls. And, because paging carriers are legally and technically incapable for performing the functions that would cause them to incur compensation obligations, they cannot enter into a *reciprocal* arrangement.

Second, paging carriers do not terminate traffic, a function that requires the switching of a call and the delivery of *that call* to the called party. *See* 47 C.F.R. § 51.701(d). In the case of a call to a paging provider, the call terminates at the paging terminal, where the information is received and the call is disconnected. *That call* is never passed on to the called party. The page is a completely separate broadcast, which occurs after the original call is over. No switched connection is ever established between the caller and the paging customer.

Third, attempting to apply reciprocal compensation to paging providers is nonsense as a matter of policy. Reciprocal compensation is intended to promote competition for local exchange service by removing the advantages of an incumbent's embedded subscriber base. Because paging providers do not provide local exchange service and do not compete with local exchange service, that rationale does not apply. Moreover, because paging providers do not substitute for local exchange service, the payment of reciprocal compensation — or the provision of free interconnection facilities — is simply a naked subsidy, which requires local exchange customers and shareholders to pay for the service that paging carriers provide to their subscribers. It also distorts demand, by encouraging paging providers to order high capacity trunks and FX-type facilities for which they have no intention of paying and therefore no incentive to calibrate to their true needs.

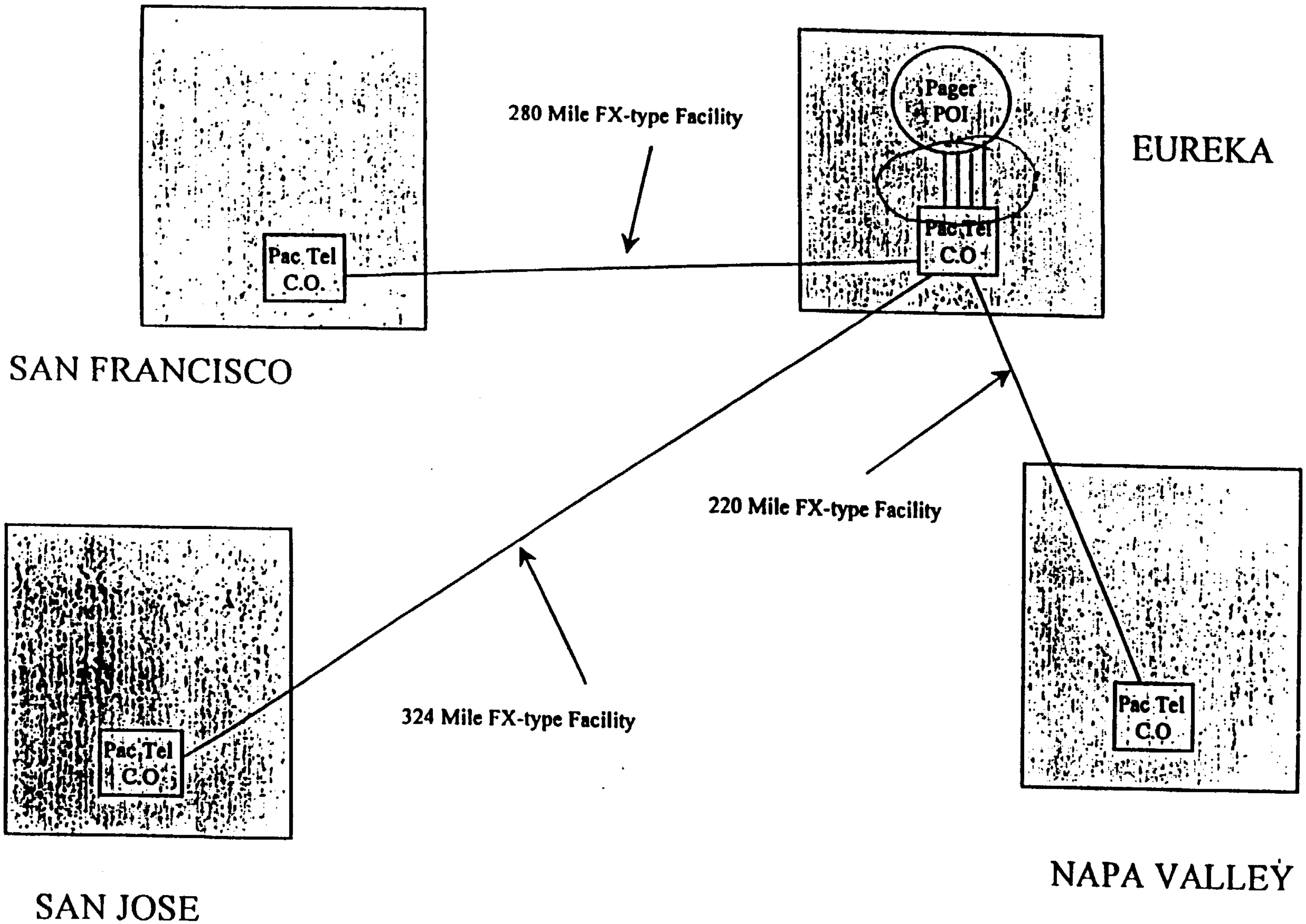
Thank you once again for your interest in this matter. Please do not hesitate to contact me if I can provide further clarification.

Sincerely,

Michael K. Kellogg

cc: John Ingle
Paula Silberthau
Don Stockdale
Frank Lamancusa
Tamara Preiss

HYPOTHETICAL PAGING INTERCONNECTION ARRANGEMENTS



The pager's equipment is located in Eureka and utilizes local Eureka telephone numbers. However, with an FX-type arrangement, the pager is also able to extend it network and assign local San Francisco, Napa Valley or San Jose telephone numbers to its paging customers.